# Significant Developments

### State Legislation Enacted

1997 Public Act No. 20,

1997 Public Act No. 21,

1997 Public Act No. 22, and

1997 Public Act No. 23
(all effective June 12, 1997),

1997 Public Act No. 31,

1997 Public Act No. 32, and

1997 Public Act No. 33
(all effective June 19, 1997),

1997 Public Act No. 35,

1997 Public Act No. 36,

1997 Public Act No. 37,

1997 Public Act No. 38,

1997 Public Act No. 39,

1997 Public Act No. 40,

1997 Public Act No. 41,

1997 Public Act No. 42,

1997 Public Act No. 43,

1997 Public Act No. 44,

1997 Public Act No. 45,

1997 Public Act No. 46,

1997 Public Act No. 47,

1997 Public Act No. 48,

1997 Public Act No. 49,

1997 Public Act No. 50,

1997 Public Act No. 51, and

1997 Public Act No. 52
(all effective June 30, 1997)
amend several statutes including the Banking Code of 1969.

A 1995 Michigan law allows out-of-state banks to establish branches in Michigan — and they have done so. The federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 purports to put Michigan branches of out-of-state national banks on the same footing as national banks headquartered in Michigan. No similar provision was made for Michigan branches of out-of-state state-chartered banks until July 1997 (See Federal Legislation, page 14). This situation created competitive inequalities.

Legislative action was necessary, in this case, because of statutory and constitutional provisions prohibiting the deposit of state surplus funds and funds of political subdivisions in out-of-state state-chartered banks or in out-of-state savings banks, savings and loan associations, and credit unions. The Michigan constitution requires that eligible depositories be organized under the laws of this state or of the United States.

In addition, Michigan law barred banks from pledging assets to secure deposits of state and local governmental units. This would have put Michigan banks at a competitive disadvantage relative to branches of out-of-state banks in the solicitation of local unit deposits of public funds because out-of-state bank branches could potentially offer greater protection of deposits to local treasurers.

A number of acts (22) were changed to allow public funds to be deposited in a local branch even if the main office is located in another state. Several of the acts were amended to remove restrictions against pledging assets to secure deposits of state and local governmental units. The Banking Code of 1969 was amended to create a means for an out-of-state bank to organize a Michigan branch under Michigan law that would be eligible to receive deposits of public funds.

**1997 Public Act No. 91** (effective July 31, 1997) amends the Secondary Mortgage Loan Act to reflect changes which have occurred in the market for secondary mortgages and to modernize the act. The modernization does the following:

- Replaces the license per office requirement with a single license/registration for each entity subject to the act.
- Eliminates the license fee and examination fee and substitutes an annual operating fee based on the volume of secondary mortgage activity in the previous calendar year. The annual operating fee would be revenue neutral and similar to that created under 1996 amendments to the Mortgage Brokers, Lenders and Servicers Licensing Act.
- Limits the total fees charged under the act to the estimated cost of enforcement of the act.
- Allows certain types of entities to register with the Commissioner in lieu of licensure.
- Expands coverage of the act to servicers of secondary mortgage loans.
- Expands the range of enforcement tools available to the Commissioner to deal with violations of the act.
- Requires a secondary mortgage servicer that requires an escrow account to deliver an annual statement to the borrower.
- Prohibits a transfer or assignment of a secondary mortgage loan before the disbursement of 75 per cent or more of the proceeds of the loan.
- Permits a borrower to "buy down" the contract interest rate by paying a prepaid interest charge.
- Authorizes second mortgage lenders to charge a prepayment fee not to exceed the amount permitted on first mortgages.
- Allows licensees and registrants to impose charges that are permitted by the FHA Title I program and any other federal lending program designed to promote secondary mortgage lending.

**1997 Public Act No. 150** (effective December 2, 1997) amends the Michigan BIDCO Act to allow for the licensure of limited liability companies and to allow BIDCO investments in limited liability companies.

## Federal Legislation Enacted

**PL 105-24** (signed July 3, 1997) amends Riegle-Neal to clarify that state-chartered banks' operations are subject to the laws of their home states wherever they conduct business. It also permits an out-of-state bank's host state branch to exercise its home state powers if permitted for either a state-chartered bank or a national bank in the host state. The measure includes Senate amendments that require the OCC to report annually on its actions regarding applicability of state law to national banks, clarify federal law's continued applicability to state banks and their branches in home and host states, and add a new section 3 confirming that the amendment does not alter the right of states to opt out of the Depository Institutions Deregulation and Monetary Control Act of 1980.

## Federal Legislation Under Consideration

### *Financial Modernization*

The informal House leaders' financial modernization working group failed to reach agreement on merging the commerce and banking financial modernization measures, reported, respectively, on June 12, 1997 and October 30, 1997.

The House Banking Committee bill, an amalgamation of earlier separate proposals by Representatives Leach, Roukema, and Baker, and centered around the administration proposal released on May 21, would repeal Glass-Steagall restrictions on banks affiliating with securities firms. It would allow national bank subsidiaries to engage in financial activities not allowed their parents, repeal Bank Holding Company Act restrictions on banks affiliating with insurance companies, and preempt state laws prohibiting such affiliations. The bill would create a National Council on Financial Services, allow "wholesale" financial institutions ("Woofies"), abolish the federal thrift charter, treat state thrifts as banks for purposes of federal law, and grandfather affiliation rights of diversified savings and loan holding companies.

The Commerce Committee bill, uniformly opposed by the banking industry, was developed by Representative Oxley. The bill would allow commercial acquisitions with assets up to $750 million by financial holding companies. The revenues from commercial activities would be limited to the lesser of 5 per cent or $500 million, with increases indexed to the CPI. The bill would eliminate the federal thrift charter but grandfather powers available to thrifts unless an institution is sold. It would limit Federal Reserve Board authority over nonbank affiliates of financial services holding companies, e.g., it would prohibit setting capital requirements for, requiring reports from, or duplicating SEC and state regulatory requirements for insurance, securities, and mutual fund firms.

### *Private Mortgage Insurance Cancellation*

Typically, lenders require borrowers to purchase private mortgage insurance (PMI) in cases when the amount of the loan exceeds 80 per cent of the appraised value of the real property securing the loan. Some lenders do not permit a borrower to cancel the PMI insurance even in cases when the borrower's equity interest has surpassed 20 per cent.

The U.S. House and Senate have approved bills in regard to required PMI. The House-passed version (Representative Hansen's H.R. 607) would require lenders to disclose annually to borrowers the criteria for cancellation of PMI. On loans originated at least a year after enactment, PMI would be cancelled automatically when the borrower achieves 25 percent equity in the home. Lenders would be required to disclose at origination that PMI is required and may be cancelled. The Senate-enacted bill (Senator D'Amato's S. 318) would amend the Truth-in-Lending Act to require automatic cancellation of lender-required PMI (upon achieving 22 per cent equity) and notice to borrowers of their termination rights.

A conference committee is expected to tackle the issue in 1998.

## Litigation

### *State - Michigan Association of Insurance Agents v. Commissioner of the Financial Institutions Bureau*

On April 22, 1997, the Michigan Association of Insurance Agents (MAIA) filed suit in Ingham

County Circuit Court challenging a declaratory ruling issued by the Commissioner on December 13, 1996. In his ruling, the Commissioner ruled that Mr. H. Terry Hanks, an officer and director of Sundance Chevrolet, Inc. (Sundance), could lawfully purchase stock in Lariat Insurance Agency, Inc. (Lariat), a dealer-related agency providing group credit insurance to Sundance. The Commissioner ruled that Mr. Hanks' status as a shareholder, officer, and director of Sundance would be insufficient to render him an installment seller under the Motor Vehicle Sales Finance Act (MVSFA). (Installment sellers are prohibited by section 31(c) from receiving direct or indirect compensation from credit insurance sold in connection with a motor vehicle installment contract.) The Commissioner reached this conclusion because an amendment to the MVSFA narrowed the definition of "person" so that an "officer, director, employee, or agent" of an installment seller is no longer prohibited by the MVSFA from owning a dealer-related agency. On August 29, 1997, Ingham County Circuit Court Judge Richard D. Ball granted the Commissioner's motion to affirm his declaratory ruling.

***Federal -***
***Patrick M. McQueen v. Eugene A. Ludwig***

The Commissioner brought an action challenging a decision of the Comptroller of the Currency on the applications of Society Bank, Michigan, Ann Arbor and Society National Bank, Indiana, South Bend. The Comptroller's January 5, 1996 decision approved three applications submitted to the Comptroller on October 26, 1995. In the first application, Society Bank, Michigan, Ann Arbor (Society-Michigan) sought to convert into a national bank called Society Bank, National Association (Society, N.A.-Michigan) with its main office in Bronson, Michigan, to retain its existing branches, and to establish a branch in Ann Arbor, the location of the former principal office of the state bank. The second application requested approval for Society, N.A.-Michigan then to relocate its main office from Bronson to Angola, Indiana, to continue operating its existing branches in Michigan, and to establish a branch at the former location of its main office in Bronson. The third application sought approval for Society, N.A.-Michigan and Society National Bank, Indiana, South Bend, Indiana (Society-Indiana) to merge and to retain as branches the existing offices of the merging banks in Michigan and Indiana. After considering the Commissioner's objections to the applications, the Comptroller issued its decision approving the applications, whereupon the Commissioner requested that the Court set aside the Comptroller's decision.

An important issue in the case was the Comptroller's decision to allow Society-Michigan (a state-chartered bank with its principal office in Ann Arbor and one of its branches in Bronson) to designate the existing branch in Bronson, rather than its principal office under state law, as the main office of the converted bank. The Court found that the National Bank Act does not require a converting bank to designate a particular location as its main office and does not require a bank to designate its principal office under state law as its main office. Since the statute does not address the issue, the Court viewed its task as limited to determining whether the Comptroller's interpretation is a reasonable interpretation of the statute. The Comptroller had concluded that a converting bank may designate as its main office any location at which it has an existing banking office or at which the bank could have a banking office under state law. After examining the Comptroller's analysis and the Commissioner's objections, the Court found the Comptroller's interpretation to be reasonable. The Court declined to set aside the January 5, 1996 decision based on the Comptroller's conclusion that the converting bank could designate an existing branch as the main office of the converted national bank.

The Bureau is appealing the decision. The appeal is before the U.S. Court of Appeals - 6th Circuit in Cincinnati.

***Federal - National Credit Union Administration v. First National Bank & Trust Co.***

The Federal Credit Union Act (FCUA) limits federal credit union membership "to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." The question presented in this appeal is whether the members of an occupational federal credit union (AT&T Family Federal Credit Union - ATTF) must all share a single "common bond of occupation" or, as the National Credit Union Administration (NCUA) contends, membership may be drawn from multiple unrelated groups, each with its own common bond. The district court held that the NCUA reasonably interpreted the FCUA. The Court of Appeals reversed the district court. The Supreme Court granted the petitions for writs of certiorari on February 24, 1997. The questions before the Supreme Court are whether banks fall within the "zone of interests" of the FCUA to have standing to challenge the interpretation by the NCUA of the FCUA's common bond requirement and whether the NCUA reasonably interpreted the common bond provision to permit membership in a federal credit union to consist of multiple groups, so long as each group has its own common bond.

Arguments were presented before the Supreme Court on October 6, 1997 and a decision is expected in early 1998.